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RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
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UNCLAS SECTION 01 OF 03 MEXICO 000837

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JUSTICE FOR CCIPS/MERRIAM/KOUAME

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [MX](#)

SUBJECT: EMBASSY'S SPECIAL 301 RECOMMENDATION FOR MEXICO

REF: A. A. SECSTATE 7944

[B. B. MEXICO 7001](#)

[C. C. 06 MEXICO 969](#)

[1](#)1. Summary: Embassy recommends that Mexico remain on the Special 301 Watch List for 2007. Mexico's federal government has made greater efforts to combat piracy and counterfeiting over the past year, but serious obstacles to effective enforcement remain. The new Calderon administration has declared its top priorities to be strengthening Mexico's rule of law and economic competitiveness. If the president and his team are serious about these (Post believes they are), then taking action to improve protection of IPR provides the GOM an excellent opportunity to make progress on both fronts.

Post will monitor such progress, or the lack thereof, closely. Cooperation with the U.S. and Canada via the Security and Prosperity Partnership and ongoing capacity building for GOM officials should help generate positive momentum. End summary.

Overall Assessment of IP Climate

[1](#)2. As Post reported in reftel B, Mexico continues to suffer from rampant and largely undeterred commercial IPR infringement that causes huge losses to Mexican, U.S., and third-country IP rights-owners. Dedicated federal IPR agencies have upgraded their efforts to enforce the law, and seizures of infringing goods continue to rise. At the end of the day, however, it is still very hard to send someone to jail for piracy or counterfeiting, making effective deterrence difficult. Obstacles include legislative loopholes, a cumbersome judiciary process, lack of effort by many state and municipal governments, and broad cultural acceptance of illegal commerce. These systemic factors are temporarily exacerbated by three other factors: 1) the new Calderon government, which took office December 1, 2006, has not finished staffing the top positions responsible for IPR in various federal agencies; 2) the initiative to re-organize the federal law enforcement agencies has not yet been completed; and 3) the recent counter-narcotics campaigns that the GOM launched in various regions of the country have required huge surges of federal law enforcement personnel and resources, to some degree diverting the same from IPR enforcement. Despite the slow start in staffing key positions, activity on the part of the GOM's dedicated IPR offices and agencies continues apace. On the other hand, large-scale enforcement operations that require the support of federal police will be affected by the surge in counter-narcotics operations until the GOM feels it has

achieved a certain comfort level in containing narco-violence. That said, Post feels the new government is sending the right signals that IPR enforcement will get the attention and resources needed. We will need to monitor GOM performance closely and follow up on both opportunities and ongoing problem areas.

¶3. Taking action on the following fronts (all of which are possible this year) would help counteract the more systemic problems identified above: passing a pending amendment to give law enforcement officials ex officio authority to go after infringers; continuing the training of judges to improve their understanding of the importance of IPR and the application of relevant Mexican laws; tapping into existing law enforcement resources and authorities that target organized crime; enlisting more cooperation from state and municipal authorities (the state of Mexico, the country's largest, is expected to sign an anti-piracy agreement with interested industry groups in spring 2007, mirroring the national agreement that was signed in 2006 with the federal government); fully implementing the GOM's commitments to protect and purchase legitimate medicines; ramping up public awareness of the value of strong IPR protection; and improving international coordination to stop cross-border flows of infringing products. More broadly, Mexico is pursuing judiciary reforms that, if eventually enacted, would streamline and rationalize the legal process for all types of cases, IPR included.

¶4. In addition to Mexico's domestic efforts to move ahead on these fronts, the GOM is working closely with the U.S. and Canadian governments in the IPR working group organized under the trilateral Security and Prosperity Partnership. The working group is focused on cooperation in three key areas:

MEXICO 00000837 002 OF 003

detecting and deterring trade in pirated and counterfeit goods; public awareness and outreach to our business communities; and measuring piracy and counterfeiting. IPR officials from the three countries have finalized an action strategy that will be presented to ministers for their approval in late February 2007. Bilaterally, the Embassy continues to take full advantage of capacity building opportunities like the U.S. Patent and Trademark Office's Global Intellectual Property Academy Training Program to expose Mexican IPR officials and judges to best international practices for protecting IPR.

Specific Areas of Concern

¶5. This section adopts the format for specific areas of concern that was used in reftel A.

¶A. Notorious Markets: Informal markets throughout Mexico feature vendors blatantly selling pirated audio-visual materials and counterfeit name-brand goods. In Mexico City, Tepito remains the main warehousing and distribution center for infringing products, and hosts scores of retail stalls to boot. Other markets of particularly ill repute include the Plaza Meave, the Eje Central, Lomas Verdes, and the Pericoapa Bazaar in Mexico City, San Juan de Dios in Guadalajara, Simitrio-La Cuchilla, San Martin Texmelucan, Emiliano Zapata, and Independence in Puebla, and Pulgas Mitras and La Ranita in Monterrey. Though authorities do conduct raids in these markets, they frequently do so at night to avoid the violent confrontations that daylight raids can provoke. The Mexico City legislature passed a bill in 2005 that would have given city officials the power to close down any business establishment engaged in the fake goods trade, but the then-mayor (who received substantial political support from the capital's numerous informal street vendors) vetoed the bill in 2006. Business groups intend to press for its re-introduction this year. On a more positive note, on February 14, 2007, Mexico City police expropriated a number of buildings in Tepito that had been used for selling illegal

drugs and pirated merchandise, vowing to convert them into a public school. There could be legal challenges to this unique tactic.

B. Optical Media Piracy: Piracy of movies, music, games and business software is rampant in Mexico. According to the International Intellectual Property Alliance (IIPA), the music, gaming and business software industries lost an estimated USD 1 billion to piracy in 2006. The movie industry, whose 2006 numbers are not yet available, reported losses of another USD 483 billion in 2005, with more than six times the number of pirated DVDs sold as legitimate ones. Mexico imports around 800 million blank media units per year, the vast majority of which are used to create pirated optical discs.

C. Use/Procurement of Government Software: The government of Mexico (GOM) generally purchases and uses legitimate software.

D. TRIPS Compliance, FTA Implementation, and Other IP-Related Issues: As reported in Post's 2006 Special 301 recommendation (reftel C), in 2005 Mexico published implementing regulations to bring its 2003 copyright law amendment into force. GOM claims that these regulations bring Mexico into compliance with its TRIPS and NAFTA obligations appear well-founded.

E. Data and Patent Protection: Mexican law does not provide any clear rules that either define or mandate data protection. The pharmaceutical industry is working on draft legislation to submit to the GOM, but this will likely be delayed while the industry fights to defeat a recently introduced bill to reduce patent protection from 20 to 10 years. The 2003 presidential decree mandating a product patent link remains in effect, though enforcement by the Mexican drug regulatory agency is patchy. The Mexican Social Security Institute and the Social Security Institute for Government Workers, two of the largest consumers of pharmaceutical products in Mexico, have yet to fully implement their 2003 pledge to purchase only legitimate medicinal products.

F. Production, Import and Export of Counterfeit Goods: Regarding production, as mentioned in para B above, a huge

MEXICO 00000837 003 OF 003

volume of blank optical discs enters Mexico each year, the vast majority of which is used to burn pirate copies of movies, music, and software. Industry groups have recommended that the GOM create a new tariff line for these items to facilitate tracking them after they are released into the market. GOM authorities complain about their growing triangulation problem. This refers to the export of counterfeit goods from places like China to the U.S., where the labels are switched to show U.S. origin. The goods then enter Mexico under NAFTA's duty-free treatment, where they end up being sold to consumers. IP-owners that want Mexican Customs to hold shipments of infringing products have to first obtain an order from PGR (the Office of the Prosecutor General of the Republic, rough equivalent of the U.S. Department of Justice) or IMPI (Mexican Institute of Industrial Property, rough equivalent of the U.S. Patent and Trademark Office) that directs customs officials to detain the merchandise. Companies requesting such actions generally report positive outcomes. However, U.S. industry has sought increased cooperation and communication between PGR, IMPI, and Mexican Customs to make the process more user-friendly.

G. Enforcement: As reported in reftels, the number of raids, arrests, and seizures made by GOM law enforcement authorities related to piracy and counterfeiting continue to rise, demonstrating that efforts are being made at the federal level to enforce IP rights. And as detailed below, there have been successes in specific areas. However, officials are quick to acknowledge that the legal limitations they work under make it difficult to inflict real pain on criminals

(i.e., incarceration or serious monetary fines). According to PGR, only four persons were criminally convicted in 2006 under Mexican IPR laws. Regarding administrative procedures, IMPI has had success in fining or even shutting down infringing businesses, but those willing to file for injunctions can stave off penalties for months or even years.

Much of this is due to outdated, conflicting, or tortuous legislation. As mentioned in para 3 above, broader judicial reform would be helpful, but there are also specific bills that could make a difference if passed. In addition to the one granting the police ex officio authority to go after pirates and counterfeiters, there are other useful bills that would, for example, criminalize video recording in movie theaters and address the sale or use of anti-circumvention devices. At the tactical level, industry groups continue to urge the GOM to make better use of its intelligence gathering assets to target the criminal bosses further up the food chain from the easily replaced street vendors. On this front, IMPI recently announced the establishment of a new office with approximately 40 officers dedicated to investigation and intelligence. Since 2004, PGR has had the ability to prosecute copyright piracy under Mexico's much stronger organized crime legislation. To date, there have been no IPR-related organized crime convictions, though in September 2006 PGR apprehended eight gang leaders involved in commercial copyright infringement. It remains to be seen if these arrests will result in prison sentences. PGR has also been actively investigating cases of counterfeit drugs under a 2006 presidential decree that made it a felony offense to trade in tampered medicines.

IH. Treaties: Mexico has ratified both of the WIPO "Internet Treaties" -- the Copyright Treaty and the Performance and Phonograms Treaty. Legislative amendments aimed at bringing Mexico into compliance with various provisions of these two treaties regarding technological protection measures and rights management remain pending in the Congress.

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